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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-fourth session
Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Draft resolution submitted by Mr. Bossuyt, Ms. Chavez, Mr. Chernichenko, Mr. Despouy, Mr. Eide, Ms. Forero Ucros, Mr. Hakim, Mr. Hatano, Mr. Khalil, Ms. Ksentini, Mr. Maxim, Ms. Palley and Mr. Saboia

1992/.. Violation of the human rights of staff members of the United Nations system and other persons acting under the authority of the United Nations

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Gravely concerned by the fact that a significant number of staff members of the United Nations system and other persons acting under the authority of the United Nations have been, over the years, detained, unaccounted for or subjected to other violations of their fundamental rights contrary to the Charter of the United Nations and other international instruments,

Recalling the relevant resolutions on this subject, in particular General Assembly resolutions 42/219 of 21 December 1987, 43/225 of 21 December 1988, 44/186 of 19 December 1989 and 45/240 of 21 December 1990, Commission on Human Rights resolutions 1989/28 of 6 March 1989, 1990/31 of 2 March 1990 and 1991/37 of 5 March 1991 and Sub-Commission resolutions 1987/21 of 3 September 1987, 1988/9 of 31 August 1988, 1989/30 of 1 September 1989 and 1990/20 of 30 August 1990,

Recalling further the recommendations of the Administrative Committee on Coordination adopted in 1987,

Deploring the persistence of violations of the fundamental rights of staff members of the United Nations system and other persons acting under the authority of the United Nations and the continuous threats against their security and independence, in spite of these resolutions,

Aware that human rights violations can only have a negative effect on the implementation of the mandates of the organizations of the United Nations, especially at a time when these organizations are being called upon to undertake greater responsibilities in various parts of the world,

Having noted that the health of detained officials has in some cases seriously deteriorated during their detention,

Preoccupied by the inordinate delays in the communication of essential information on the detention of staff members which continues to be imposed with regard to the different organizations of the United Nations system which have the right fully to protect their staff members in the exercise of their functions,

Greatly appreciating the efforts of the Secretary-General to promote a satisfactory resolution of all cases of this kind, and noting with interest Security Council resolution 767 (199..) in which the Council demands that all parties respect the safety and the security of the personnel of the United Nations and of other humanitarian organizations,

1. Urges again Governments and other entities holding de facto territorial power to respect and to ensure respect for the rights of staff members and other persons acting under the authority of the United Nations, as well as of their families;

2. Requests the Secretary-General to continue his efforts and to take every measure to ensure that the human rights and privileges and immunities of the personnel of the United Nations system, including experts, and their families are fully respected, to demand compensation and to monitor the indemnization for the harm caused to personnel and to their organizations, as well as the full reinsertion and re-education of the staff members concerned;

3. Strongly urges Governments and other entities holding de facto territorial power to allow physicians to examine the state of health of the staff members and experts of the United Nations system and of the members of their families who are under detention and to allow these persons to receive the necessary treatment through a physician agreed upon by the United Nations, inasmuch as possible of their own choosing;

4. Also urges Governments and other entities holding de facto territorial power, in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly in its resolution 43/173 of 9 December 1988, to provide adequate and prompt information concerning the arrest or detention of United Nations staff members and their families, and to grant the representative of the competent international organization access to them without delay;

5. Calls upon Governments and other entities detaining personnel of the United Nations system to allow the representative of the competent international organization to attend any hearing concerning them and members of their families;

6. Expresses its appreciation to the Special Rapporteur, Mrs. Mary Concepción Bautista, for the work she has carried out aimed at improving on a long-term basis the protection of personnel of the United Nations system and their families, as well as of experts and consultants;

7. Expresses its satisfaction at the recommendations contained in the final report of the Special Rapporteur (E/CN.4/Sub.2/1992/19);

8. Calls upon the Commission on Human Rights to request the existing human rights machinery, including the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the question of torture and the Special Rapporteur on summary or arbitrary executions, to examine the cases involving the human

rights of the staff members of the United Nations system and their families, as well as of experts and consultants, and to transmit the relevant part of their respective reports to the Secretary-General for inclusion in his report to the Commission on Human Rights under item 10 of its agenda;

9. Recommends the following draft resolution to the Commission on Human Rights for adoption:

The Commission on Human Rights,

Taking into account resolution 1992/.. of .. August 1992 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having examined the final report of the Special Rapporteur, Mrs. Mary Concepción Bautista, on the protection of the human rights of United Nations staff members, experts and their families (E/CN.4/Sub.2/1992/19),

1. Expresses its appreciation to the Special Rapporteur for her final report on the protection of the human rights of United Nations staff members, experts and their families;

2. Requests the Secretary-General to take steps aimed at ensuring the application without delay of all the recommendations contained in the report;

3. Requests the existing human rights machinery, including the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the question of torture and the Special Rapporteur on summary or arbitrary executions, to examine the cases involving the human rights of staff members of the United Nations system and their families, as well as experts and consultants, and to transmit the relevant part of their respective reports to the Secretary-General for inclusion in his report to the Commission on Human Rights under item 10 of its agenda;

4. Requests the Secretary-General to present a report annually to the Third Committee of the General Assembly on the implementation of the protection measures and on redress for the possible harm caused.

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(20)

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E

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
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Fourty-fourth session
Agenda item 5

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Draft resolution submitted by Mr. Despouy, Mr. Eide, Mrs. Forero Ucros, Mr. Joinet and Mr. Saboia

1992/... Situation of human rights in Guatemala

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and other international legal instruments for the protection of human rights, as well as by the relevant norms and principles of international humanitarian law,

Recalling its resolution 1991/5 of 23 August 1991 and Commission on Human Rights resolution 1992/78 of 5 March 1992 endorsing the recommendations contained in the report (E/CN.4/1992/5) by the Independent Expert on the situation of human rights in Guatemala, Mr. Christian Tomuschat, and renewing and extending his mandate,

Taking note of the legal and institutional reforms introduced by the Government of Guatemala with a view to combating impunity and guaranteeing the full enjoyment of human rights and fundamental freedoms,

Noting with deep concern that, notwithstanding these measures, a situation of serious violations of human rights persists as a result of practices carried out by groups linked to the security forces,

Aware of the need to reinforce the investigation and punishment of those responsible for human rights violations with the aim of eliminating impunity,

Deeply concerned by the situation of the indigenous peoples, who are subjected to violations of their human, civil, political, economic, social and cultural rights and whose legitimate demands continue to be ignored,

Aware that the situation of refugees and displaced persons within the country who are willing to return to their places of origin, the majority of whom are indigenous inhabitants, requires that the Government of Guatemala should intensify its efforts to create conditions that will enable them to return to their places of origin, enjoying full guarantees of their security and respect for their human rights for that purpose, and should continue to guarantee the security of institutions cooperating in the resettlement of such persons,

Noting with interest the report of June 1992 by the Procurator for Human Rights of Guatemala and emphasizing the importance of this institution for the promotion and protection of human rights,

Noting with appreciation that the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca have continued the process of negotiations following the signature of the Agreements of Oslo (March 1990), Mexico (April 1991) and Querétaro (July 1991) and encouraging them to persist in that process in a constructive spirit until peace [and the full enjoyment of human rights] is achieved,

Noting with appreciation the important work done by the Independent Expert on the situation of human rights in Guatemala, the positive role played by the Observer appointed by the Secretary-General of the United Nations and the constructive contribution made by the National Conciliator, Monsignor Rodolfo Quezada Toruno, in the search for a political solution to the internal armed conflict,

Aware that the interests of all sectors of Guatemalan society must be taken into account in the peace negotiations,

1. Expresses its deep concern over the persistence of serious human rights violations in Guatemala, despite the Government's efforts to combat them;

2. Exhorts the Government of Guatemala to intensify those efforts so as to ensure respect for all human rights and full observance of the relevant international instruments, including the norms of international humanitarian law;

3. Acknowledges the undertaking by the Government of Guatemala to this effect and expresses its appreciation of the cooperation which the Government has extended to the United Nations under the advisory services in the field of human rights;

4. Urges the Government of Guatemala to intensify investigations aimed at identifying and bringing to justice those responsible for violations of human rights, to facilitate the activities of organizations, both official and non-governmental, concerned with the promotion and protection of human rights, and to ensure that the judicial system can operate independently and with due protection being afforded to judges, investigators, witnesses and the relatives of victims;

5. Calls upon the Government of Guatemala, particularly considering that the year is 1992, to emphasize the need to respond to the requests and proposals of the indigenous peoples through the adoption of practical measures to improve their economic, social and cultural conditions;

6. Again exhorts the Guatemalan authorities to strengthen measures to ensure that human rights are respected in the country in all their aspects and to pay special attention to the recommendations made by the Independent Expert in his report, principally the abolition of the system for the protection of the citizenry and of the voluntary civil self-defence committees, within the context of the negotiations between the Government and the Unidad Revolucionaria Nacional Guatemalteca;

7. Exhorts the Government of Guatemala to adopt urgent measures to facilitate the return of refugees and displaced persons within the country who wish to go back to their places of origin, while at the same time affording

all guarantees of security and full respect for human rights, and also to continue to guarantee the security of all institutions cooperating in such resettlement;

8. Encourages the Procurator for Human Rights of Guatemala and his associates to continue their intensive and positive efforts for the protection of human rights, and at the same time appeals to the international community to provide this institution with support and cooperation;

9. Expresses its appreciation of the contribution to the peace process made by the Independent Expert, as well as by the Observer appointed by the Secretary-General of the United Nations and the National Conciliator, and expresses its conviction that the United Nations should continue and intensify its cooperation both in the field of human rights and with regard to all matters concerning the peace negotiations in Guatemala;

10. Urges both parties, the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca, to reach an agreement on human rights as rapidly as possible and to continue the peace negotiations in a climate of mutual respect and a constructive spirit, taking into consideration the interests of all sectors of society.

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Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Draft decision submitted by Mr. Boutkevitch, Mr. Despouy, Mr. Guissé, and Mr. Hakim

1992/... Study of the issue of the privatization of prisons

At its ... meeting, on ... August 1992, the Sub-Commission, recalling its decisions 1989/110 of 1 September 1989 and 1991/105 of 28 August 1991, taking into account the working paper submitted by Mr. Alfonso Martínez (E/CN.4/Sub.2/1991/56) to the Sub-Commission at its forty-third session and having considered the working paper submitted by the Secretary-General on the issue of the privatization of prisons (E/CN.4/Sub.2/1992/21) and the report of the Working Group on Detention at its forty-fourth session (E/CN.4/Sub.2/1992/22), decided, without a vote, to request Mrs. Claire Palley to prepare, without financial implications, an outline of the possible utility, scope and structure of a special study which may be undertaken on the issue of privatization of prisons, to be submitted to the Working Group on Detention and to the Sub-Commission at its forty-fifth session. It also requested the Secretary-General to provide Mrs. Palley with all possible assistance for the completion of her task.

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(203)

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Forty-fourth session
Agenda item 11

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Draft resolution submitted by Mr. Bossuyt, Ms. Chavez, Mr. Despouy, Mr. Eide, Mr. Guissé, Mr. Hatano, Mr. Maxim and Mr. Yimer

1992/... Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Convinced that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

Recalling its resolution 1990/23 of 30 August 1990 in which it entrusted Mr. Louis Joinet with the preparation of a report on the independence of the judiciary,

Recalling also General Assembly resolution 45/166 of 18 December 1990 welcoming the Basic Principles on the Role of Lawyers adopted by the

Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders and inviting Governments to respect them and take them into account within the framework of their national legislation and practice,

Taking note of General Assembly resolution 46/120 of 17 December 1991 in which the Assembly, welcoming the recommendations contained in the first report of the Special Rapporteur (E/CN.4/Sub.2/1991/30 and Add.1-4) and endorsed by the Sub-Commission and also welcoming the decision of the Sub-Commission to entrust Mr. Joinet with the preparation of a further report, reaffirmed the importance of the full and effective implementation of United Nations norms and standards on human rights in the administration of justice,

Welcoming the request by the General Assembly to the Secretary-General in its resolution 46/120 to strengthen cooperation between the United Nations Centre for Human Rights and the United Nations Centre for Social Development and Humanitarian Affairs in the field of human rights in the administration of justice,

Recalling Economic and Social Council decision 1992/229 of 20 July 1992 approving Commission on Human Rights resolution 1992/33 of 28 February 1992 in which the Commission endorsed the decision of the Sub-Commission to entrust the Special Rapporteur with the preparation of a further report, as described in Sub-Commission resolution 1991/35 of 29 August 1991,

1. Takes note with appreciation of the report on the independence of the judiciary and the protection of practising lawyers, prepared by the Special Rapporteur, Mr. Louis Joinet, pursuant to Sub-Commission resolution 1991/35 (E/CN.4/Sub.2/1992/25 and Add.1);

2. Endorses the recommendations contained in the report;

3. Calls upon Governments to strengthen the independence of the judiciary and the protection of practising lawyers, as fundamental elements in the protection of human rights;

4. Decides to entrust the Special Rapporteur with a preparation of a report:

(a) To bring to the attention of the Sub-Commission information on practices and measures which have served to strengthen or to weaken the independence of the judiciary and the protection of practising lawyers in

accordance with United Nations standards. In carrying out this task, he will take initiatives with a view to, inter alia, improving contradictory procedures;

(b) To propose specific recommendations regarding the independence of the judiciary and the protection of practising lawyers to be taken into account in the advisory services and technical assistance programmes and projects of the United Nations and, in that regard, to follow up the recommendations contained in his first report (E/CN.4/Sub.2/1991/30 and Add.1-4);

(c) To examine the ways and means of enhancing cooperation and avoiding overlapping and duplication in the work of the Commission on Crime Prevention and Criminal Justice and that of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

(d) To elaborate on the recommendation contained in his report (E/CN.4/Sub.2/1992/25/Add.1);

5. Requests the Secretary-General to transmit the present resolution to Governments, intergovernmental and non-governmental organizations, including professional associations of judges and lawyers, requesting specific information on practices and measures which have served to strengthen or to weaken the independence of the judiciary and the legal profession;

6. Also requests the Secretary-General to provide the Special Rapporteur with all the assistance necessary for the completion of this task;

7. Decides to consider the report of the Special Rapporteur under the agenda item entitled "Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers", at its forty-fifth session;

8. Recommends the following draft resolution to the Commission on Human Rights for adoption:

The Commission on Human Rights,

Guided by articles 7, 8, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4 and 26 of the International Covenant on Civil and Political Rights,

Convinced that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice,

Recalling its resolutions 1992/33 of 28 February 1992, 1991/39 of 5 March 1991, 1990/33 of 2 March 1990 and 1989/32 of 6 March 1989,

Recalling also General Assembly resolution 45/166 of 18 December 1990 welcoming the Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders and inviting Governments to respect them and take them into account within the framework of their national legislation and practice,

Taking note of General Assembly resolution 46/120 of 17 December 1991 in which the Assembly, welcoming the recommendations contained in the first report of the Special Rapporteur (E/CN.4/Sub.2/1991/30 and Add.1-4) and endorsed by the Sub-Commission and also welcoming the decision of the Sub-Commission to entrust Mr. Joinet with the preparation of a further report, reaffirmed the importance of the full and effective implementation of United Nations norms and standards on human rights in the administration of justice,

Having examined the report on the independence of the judiciary and the protection of practising lawyers, prepared by the Special Rapporteur pursuant to Sub-Commission resolution 1991/35 of 29 August 1991 (E/CN.4/Sub.2/1992/25 and Add.1).

1. Welcomes the recommendations contained in the report of the Special Rapporteur (E/CN.4/Sub.2/1992/25/Add.1) and endorsed by the Sub-Commission on Prevention of Discrimination and Prevention of Minorities in its resolution 1992/... of ... August 1992.

2. Endorses the decision of the Sub-Commission to entrust Mr. Louis Joinet with the preparation of a report:

(a) To bring to the attention of the Sub-Commission information on practices and measures which have served to strengthen or to weaken the independence of the judiciary and the protection of practising lawyers in accordance with United Nations standards. In carrying out this task, he will take initiatives with a view to, inter alia, improving contradictory procedures;

(b) To propose specific recommendations regarding the independence of the judiciary and the protection of practising lawyers to be taken into account in the advisory services and technical assistance programmes and

projects of the United Nations and, in that regard, to follow up the recommendations contained in his first report (E/CN.4/Sub.2/1991/30 and Add.1-4);

(c) To examine the ways and means of enhancing cooperation and avoiding overlapping and duplication in the work of the Commission on Crime Prevention and Criminal Justice and that of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;

(d) To elaborate on the recommendation contained in his report (E/CN.4/Sub.2/1992/25/Add.1);

3. Requests the Secretary-General to provide the Special Rapporteur with all the assistance necessary for the completion of this task;

4. Recommends the following draft decision to the Economic and Social Council for adoption:

"The Economic and Social Council, taking note of Commission on Human Rights resolution ... of ..., endorses the decision of the Commission to approve the decision of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to entrust Mr. Louis Joinet with the preparation of a report on strengthening the independence of the judiciary and the protection of practising lawyers, as described in Sub-Commission resolution 1992/..., and approves the request of the Commission to the Secretary-General to give him the assistance necessary for the completion of his task."

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(204)

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Forty-fourth session
Agenda item 8

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Draft resolution submitted by Mr. Boutkevitch, Mr. Chernichenko, Mr. Despouy, Mr. Edie, Mr. Maxim, Ms. Palley, Mr. Sachar, Ms. Warzazi and Mr. Yimer

1992/.. Human rights dimensions of population transfer, including the implanation of settlers and settlements

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolutions 1990/17 of 30 August 1990 and 1991/28 of 29 August 1991, in which it decided to include the question of the human rights dimensions of population transfer, including the implantation of settlers and settlements, in its future work programme with a view to considering further effective action on this matter,

Noting that the implantation of settlers and the removal of people received explicit attention in various country-specific resolutions adopted by the Sub-Commission in 1991, 1990, and previously, as well as in the second

GE.92-13627/0564K (E)

progress report on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities (E/CN.4/Sub.2/1992/37),

Concerned that population transfer policies have affected and continue to affect numerous countries and peoples, as well as minorities, throughout the world,

Considering that the policy and practice of population transfer, including the removal of people and the implantation of settlers, particularly where induced or conducted by Governments and occupying authorities, invariably have serious consequences for the enjoyment or constitute a serious violation of the human rights of the people removed, the original inhabitants of the countries and territories concerned, as well as the settlers,

Recalling the rights enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples, in particular the right to freedom of movement, to choose one's residence and to leave any country and to return to one's country, the right to be free from arbitrary interference with one's privacy, family or home, the right to an adequate standard of living, the inherent right to life, the right to liberty and security of person, the right of all peoples freely to determine their political status and freely to pursue their economic, social and cultural development and freely to dispose of their natural wealth and resources,

Recalling also the International Covenant on the Elimination of All Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide, which defines the act of genocide to include deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,

Aware that the practice of population transfer inherently leads to widespread and systematic discrimination,

Conscious that population transfer may constitute part of a general policy directed against distinct ethnic, racial or religious groups and may be motivated by strategic, demographic, military and political aims of imposing effective control over and assimilation of nations and peoples,

Disturbed by reports concerning the implantation of settlers and settlements in certain countries, including occupied territories, with the aim of changing the demographic structure and the political, cultural, religious

and other characteristics of those countries or with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such,

Especially disturbed by reports of deliberate policies towards distinct ethnic, racial or religious groups, of so-called ethnic cleansing and demographic manipulation in certain countries,

Recalling that article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, states that the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies,

Noting with deep concern that this practice is a significant factor in the origin and deepening of ethnic unrest and conflict, which contribute towards increasing social, economic, political and cultural instability, thereby threatening world peace and security,

Having in mind that the draft Code of Crimes against the Peace and Security of Mankind currently being elaborated by the International Law Commission states, in article 21, that compulsory population transfer constitutes an international crime,

1. Recognizes that practices of population transfer constitute a violation of fundamental human rights;

2. Entrusts Mr. Al-Khasawneh and Mr. Hatano, as Special Rapporteurs, with preparing a preliminary study on the human rights dimensions of population transfer, including the implantation of settlers and settlements;

3. Requests the Special Rapporteurs to examine, in the preliminary study, the policy and practice of population transfer, in the broadest sense, with a view to outlining the issues to be analysed in further reports, in particular the legal and human rights implications of population transfer and the application of existing human rights principles and instruments;

4. Requests the Secretary-General to give the Special Rapporteurs all the assistance necessary for their study;

5. Encourages the Special Rapporteurs, in preparing the preliminary study, to examine the widest possible variety of sources, including information received from non-governmental and other relevant organizations;

6. Requests the Special Rapporteurs to submit the preliminary study to the Sub-Commission at its forty-fifth session, for consideration of, inter alia, how most effectively to proceed and take effective further action on the issue of population transfer;

7. Requests Mr. Asbjørn Eide, in his study on possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities to address, in his next report, the impact of population transfer on the rights of minorities;

8. Recommends to the Commission on Human Rights the following draft decision for adoption:

The Commission on Human Rights, noting Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1992/.. of .. August 1992, endorses the decision of the Sub-Commission to entrust Mr. Awn Shawkat Al-Khasawneh and Mr. Ribot Hatano, as Special Rapporteurs, with preparing a preliminary study on the human rights dimensions of population transfer, including the implantation of settlers and settlements, and requests the Secretary-General to give the Special Rapporteurs all the assistance necessary for their task.

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(205)

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E

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Draft resolution submitted by Mr. Guissé, Mr. Khalil, Mr. Maxim and Ms. Palley

1992/... Detention on Bougainville

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Bearing in mind article 13 (2) of the Universal Declaration of Human Rights,

Recalling that, in accordance with Articles 55 and 56 of the Charter of the United Nations, Member States pledge to take joint and separate action in cooperation with the Organization for the achievement of universal respect for and observance of human rights and fundamental freedoms,

Considering the great importance of the various fact-finding and monitoring mechanisms established under the international human rights instruments and the Charter of the United Nations for the promotion and protection of human rights and fundamental freedoms in all countries,

Aware of the continuing allegations of human rights violations from a variety of reliable sources in relation to the situation on Bougainville,

Noting that the encouraging initial statements by the newly elected Government of Papua New Guinea that human rights violations would be brought to an end have yet to be translated into action,

1. Calls upon the Government of Papua New Guinea to restore without delay the freedom of movement to the inhabitants of Bougainville in the interest of protecting and promoting human rights and fundamental freedoms;

2. Requests the Special Rapporteur on the study of treaties, agreements and other constructive arrangements between States and indigenous populations to consider the implementation of the agreements entered into between the indigenous peoples of Bougainville and Papua New Guinea, in particular with a view to examining the link between the implementation of the agreements and the achievement and observance of human rights and fundamental freedoms.

206

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E

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Draft resolution submitted by Mr. Bossuyt, Mr. Eide, Mr. Joinet and Mr. Saboia

1992/.. Situation in East Timor

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Bearing in mind the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

GE.92-13603/0503K (E)

Recalling resolution 37/30 of 23 November 1982 of the General Assembly, in which it requested the Secretary-General to initiate consultations with all parties directly concerned to resolve the conflict in East Timor,

Recalling its resolutions 1982/20 of 8 September 1982, 1983/26 of 6 September 1983, 1984/24 of 29 August 1984, 1987/13 of 2 September 1987, 1989/7 of 31 August 1989 and 1990/15 of 30 August 1990 concerning the situation in East Timor,

Bearing in mind the consensus statements by the Chairman of its forty-third session (E/CN.4/Sub.2/1991/SR.26) and the Chairman of the Commission on Human Rights, adopted on 4 March 1992, at its forty-eighth session (E/CN.4/1992/SR.54/Add.1),

Having examined the report of the visit to East Timor by the Special Rapporteur on the question of torture, Mr. Peter Kooijmans (E/CN.4/1992/17/Add.1),

Appalled at the loss of life and injuries among civilians resulting from the violent incidents in Dili on 12 November 1991, and concerned at the fate of those who are missing,

Welcoming the decision of the Secretary-General to send Mr. Amos Wako as his Personal Envoy to inquire into the violent incidents of 12 November 1991,

Regretting that the conclusions of the National Commission of Inquiry set up by the Indonesian Government failed, in its conclusions to identify clearly those responsible for the killings,

Considering that the Government of Indonesia had undertaken to adopt the measures necessary towards the implementation of the recommendations of the Special Rapporteur on the question of torture,

Disturbed by the heavy sentences passed on the East Timorese involved in peaceful political activities on the basis of the "Anti-Subversion Law" whose abrogation had been recommended by the Special Rapporteur on the question of torture of the Commission on Human Rights,

Disturbed also by reports of continuing human rights violations in East Timor,

Disappointed by the persistent denial of access to the territory to human rights organizations,

1. Condemns the massacre of East Timorese civilians, including women and children, on 12 November 1991, in Dili;

2. Expresses its utmost concern at reports of continuing widespread human rights violations in East Timor;

3. Invites the Secretary-General to transmit the full report of his Personal Envoy, Mr. Amos Wako, to the Commission on Human Rights at its forty-ninth session;

4. Requests the Secretary-General in the preparation of his report on the situation in East Timor for consideration by the Commission on Human Rights under item 12 to include an analytical compilation of all information received from, inter alia, Governments, intergovernmental and non-governmental organizations;

5. Commends the decision of the Government of Indonesia to set up a National Commission of Inquiry, but regrets that investigation of the actions of the armed forces on 12 November 1991 has not been followed through and invites the Indonesian authorities to cooperate in the preparation of the above-mentioned report of the Secretary-General by providing information on the complementary measures to bring the members of the armed forces responsible to justice;

6. Urges the Government of Indonesia to provide the Working Group on Enforced or Involuntary Disappearances information regarding the missing persons;

7. Also urges the Indonesian authorities on humanitarian grounds to cooperate with the families of the victims by providing information about the dead and the whereabouts of their remains for proper burial;

8. Calls upon the Indonesian authorities to honour their commitment to facilitate access to East Timor by humanitarian and human rights organizations;

9. Decides to review the situation in East Timor at its forty-fifth session and to this end asks the Secretariat to transmit to it all available information concerning the human rights situation in the territory.

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(207)

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Forty-fourth session
Agenda item 15

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Draft resolution submitted by Mr. Eide, Mr. Hatano and Ms. Warzazi

1992/... Relocation of Navajo and Hopi families

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling its resolutions 1989/37 of 1 September 1989 and 1990/34 of 31 August 1990 concerning the relocation of Navajo and Hopi families from northern Arizona in the United States of America,

Recalling also the reports prepared by Ms. Erica-Irene Daes and Mr. John Carey (E/CN.4/Sub.2/1989/35, Part I and Part II and Add.1) pursuant to its decision 1988/105 of 1 September 1989,

Mindful of the conclusions contained in the working paper on human rights dimensions of population transfer, including the implantation of settlers and settlements prepared by Ms. Christy Mbonu (E/CN.4/Sub.2/1981/47), with respect to the impact of such activities on the enjoyment of human rights,

1. Recommends that members of the Navajo Nation and Hopi Tribe participate in court-ordered mediation to seek a peaceful settlement of the situation;

2. Expresses the hope that mediation will result in a settlement that respects the rights and dignity of the families directly affected;

3. Appeals to the Government of the United States of America to ensure, through cooperation with the court-appointed mediator, that no further relocation of these families takes place;

4. Requests the mediator to submit all relevant information regarding the human rights aspects of the case in question and the outcome of the mediation to the Sub-Commission at its forty-fifth session.

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(208)

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Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Draft resolution submitted by Mr. Eide and Ms. Palley

1992/.. Situation of human rights in Colombia

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights and the Geneva Conventions of 12 August 1949 and the 1977 Additional Protocols thereto,

Reiterating that the Governments of all member States have an obligation to promote and protect human rights and fundamental freedoms, even under exceptional national circumstances,

Having considered the report presented by the Special Rapporteur on summary or arbitrary executions (E/CN.4/1990/22/Add.1) after his visit to

Colombia and the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1989/18/Add.1), also presented after its visit to Colombia,

Having considered also the report on the independence of the judiciary and the protection of practising lawyers prepared by the expert, Mr. Louis Joinet (E/CN.4/Sub.2/1991/30 and Add.1-4), in particular the sections concerning the attacks on judges and lawyers in Colombia, especially those who try or investigate cases of human rights violations, and concerning the requirements for rendering advisory services in the field of human rights,

Taking into account that the Government and the people of Colombia have made significant efforts to modernize legal institutions and have adopted a new Constitution which includes an ample catalogue of fundamental rights and freedoms and institutes protection and defence mechanisms such as the tutelage action (acción de tutela) and the ombudsman (Defensor del Pueblo),

Deeply concerned at the persistence of serious violations of human rights, as demonstrated by the large number of persons who are murdered for political or ideological reasons, and at the persistence of the practice of enforced disappearances of persons,

Concerned at the information provided by the Special Rapporteur on summary or arbitrary executions and the Working Group on Enforced or Involuntary Disappearances regarding the participation of members of the Colombian armed forces in various acts involving violations of human rights,

Taking note of resolutions 1/92, 31/92, 32/91 and 33/91 of the Inter-American Commission on Human Rights which established the responsibility of the Colombian State in the extrajudicial execution of one person and the enforced disappearance of sixteen persons,

Concerned about the effects on the civilian population of the conflict between the guerrilla movements and the Colombian armed forces, which has produced not only a large number of victims but also an increasing number of families displaced from their homes and lands,

Taking into account the fact that, during 1991, the Government of Colombia and the guerrilla groups initiated a process of negotiation in order to seek a political solution to the internal armed conflict, and recognizing that due respect for human rights and international humanitarian law represent major items on the agenda of the negotiations,

Aware of the weakness of the Colombian judicial system which experiences difficulties in investigating, discovering and punishing those responsible for human rights violations and other serious crimes,

Considering that it is necessary for the Government of Colombia to intensify investigations aimed at identifying and bringing to justice those responsible for violations of human rights, to facilitate the activities of organizations, both official and non-governmental, concerned with the promotion and protection of human rights, and to ensure the effectiveness of the judicial system to overcome the prevailing impunity,

Aware of the need to promote the legislative development of the new Constitution in accordance with international human rights law,

1. Takes note of the promulgation of the new Constitution of Colombia, of the ample catalogue of the rights and freedoms set forth therein and of the establishment of the protection mechanisms for the fundamental rights and freedoms of the tutelage action (acción de tutela) and the ombudsman (Defensor del Pueblo);

2. Invites the Commission on Human Rights to consider, in consultation with the Government of Colombia, appointing an expert who would advise the Government and keep the Commission informed of obstacles encountered and progress made by the Government of Colombia, particularly on the following points:

(a) In the legislative development of the 1991 Constitution, emphasizing the need to ensure compliance with international human rights law;

(b) In the efforts to repress the activities of the paramilitary groups, advising the Government on the treatment to be given to those members of the armed forces associated with these groups and involved in gross human rights violations, and on the steps to take to achieve a democratic reform of the armed forces by civil authorities;

(c) In the peace process, encouraging the parties to reach an agreement to respect human rights and apply international humanitarian law;

(d) In the administration of justice, seeking to form an independent and impartial judiciary which combines efficiency with due respect for the guarantees and rights of persons;

3. Also invites the Commission on Human Rights to consider the question at its forty-ninth session under the agenda item entitled "Advisory services in the field of human rights".

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(209)

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E

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Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH
WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Draft resolution submitted by Mr. Eide, Ms. Forero Ucros, Mr. Guissé, Mr. Hatano, Mr. Khalil, Ms. Ksentini, Mr. Maxim and Ms. Palley

1992/... International register of information on arms

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Reaffirming that the primary function of the United Nations is to promote international peace and security,

Recalling the purposes and principles of the Charter of the United Nations as well as the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,

Deeply concerned at the large and increasing number of armed conflicts both within and between Member States of the United Nations,

Conscious of the fact that instability and armed conflict seriously undermine respect for and the full realization of civil, political, economic, social and cultural rights,

Welcoming various efforts towards the peaceful settlement of disputes under United Nations auspices,

Alarmed by reliable reports of ongoing and flagrant violations of the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977 by States parties engaged in armed conflict,

Recalling the working paper on the interrelationship between human rights and peace prepared by Mr. M. Bhandare (E/CN.4/Sub.2/1991/32 and Corr.1),

Welcoming the adoption by the General Assembly of its resolution 46/36 H of 6 December 1991, in which the Assembly, promoting the concept of transparency and recognizing that international arms transfers and production and the illicit arms trade lead to the violation of human rights, urged Member States to monitor and control arms transfers effectively in order to eradicate the illict arms trade,

Welcoming also the adoption by the General Assembly of its resolution 46/36 L of 9 December 1991, in which it requested the Secretary-General to establish a universal and non-discriminatory Register of Conventional Arms, to include data on international arms transfers as well as information provided by Member States on military holdings, procurement through national production and certain categories of equipment, subject to the expansion of the scope of the Register by the addition of further categories of equipment and inclusion of data on military holdings and procurement through national production,

Taking note of the fact that, pursuant to its resolution 46/36 L, the General Assembly requested the Secretary-General, with the assistance of a panel of governmental technical experts, to elaborate the technical procedures and to make any adjustments to the annex to the present resolution necessary for the effective operation of the Register, and to prepare a report on the modalities for early expansion of the scope of the Register by the addition of further categories of equipment and inclusion of data on military holdings and procurement through national production, and to report to it at its forty-seventh session,

Bearing in mind that the reduction of world military expenditures would have a significant positive impact on the social and economic development of all peoples,

1. Appeals to all States Members of the United Nations to give every assistance to the Secretary-General in maintaining the Register of Conventional Arms, as set out in the annex to General Assembly resolution 46/36 L of 9 December 1991;

2. Also appeals to Member States to take into account the potentially negative impact of arms exports upon the enjoyment and full realization of human rights;

3. Urges States to incorporate human rights criteria into any and all international transactions involving the sale or provision of arms or other military materials to other States or groups involved in armed conflict and, inter alia, to require such arms and materials to be used for self-defence, in accordance with the Charter of the United Nations, or for the maintenance of law and order in a democratic society;

4. Recommends that the Commission on Human Rights request the General Assembly, through the Economic and Social Council, to consider inviting Member States to approve as soon as possible the elaboration and expansion of the Register of Conventional Arms to cover national production, and in particular to extend the Register to cover small arms and unconventional weapons.

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Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH
THE SUB-COMMISSION HAS BEEN CONCERNED

Draft decision submitted by Mr. Eide

1992/... Declaration defining gross and large-scale violations as an international crime

At its ... meeting, on ... August 1992, the Sub-Commission, having received the working paper submitted by Mr. Chernichenko on the preparation of a declaration defining gross and large-scale violations as an international crime (E/CN.4/Sub.2/1992/51), decides to give due attention to the working paper in its future work.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Draft decision submitted by Mr. Despouy, Mr. Eide, Mrs. Forero Ucros, Mr. Guissé, Mr. Hakim, Mr. Khalil, Mrs. Ksentini, Mr. Maxim, Mrs. Mbono, Mr. Saboia, Mr. Sachar and Mrs. Warzazi

1992/1.. Situation in Iraq

At its ... meeting, on ... August 1992, the Sub-Commission, recalling the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the relevant provisions of the Geneva Conventions of 12 August 1949 and their two Additional Protocols, recalling also its decision 1991/107 of 29 August 1991 and the Declaration of Minimum Humanitarian Standards contained in working paper E/CN.4/Sub.2/1991/55, deeply concerned about the serious consequences which the embargo imposed on Iraq for the past two years is having on the entire civilian population in Iraq and, in particular, on children, women and the most underprivileged population sectors, decides, without a vote, to appeal to the international community as a whole not to obstruct the supply of medicines to the civilian population.

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Agenda item 8

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Draft resolution submitted by Mr. Al-Khasawneh, Mrs. Forero Ucros, Mr. Khalifa, Mr. Maxim, Mr. Saboia and Mr. Sachar

1992/.. Realization of economic, social and cultural rights

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Mindful that the Universal Declaration of Human Rights provides that all persons are entitled to the realization of the economic, social and cultural rights which are indispensable to their dignity and the free development of their personality,

Convinced that, in accordance with the Universal Declaration of Human Rights, the Proclamation of Tehran and General Assembly resolution 32/130 of 16 December 1977, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights,

Concerned that the implementation and promotion of economic, social and cultural rights and the obstacles to their realization have not yet received sufficient attention within the framework of the United Nations system,

Concerned at the negative effects of structural adjustment programmes upon the realization of economic, social and cultural rights,

Recalling Commission on Human Rights resolution 1992/10 of 21 February 1992,

Welcoming the contacts established by the Special Rapporteur with international financial institutions, including the World Bank and the International Monetary Fund, and the dialogue which has started between these institutions and the human rights bodies,

Taking note of the Human Development Report 1992 of the United Nations Development Programme and the World Development Report 1992 of the World Bank,

1. Expresses its deep appreciation to the Special Rapporteur, Mr. Danilo Türk, for his final report on the realization of economic, social and cultural rights (E/CN.4/Sub.2/1992/16) and endorses the recommendations contained in paragraphs 202 to 246;

2. Urges the international and financial institutions, in particular the World Bank and the International Monetary Fund, to take greater account of the adverse impacts of their policies and programmes of structural adjustment on the realization of economic, social and cultural rights;

3. Also urges the international financial institutions to continue, on an ongoing basis, their full participation in the work and debates of the human rights bodies of the United Nations and to take into account the recommendations contained in paragraphs 231 to 243 of the final report of the Special Rapporteur;

4. Urges all States to take serious note of and act upon the recommendations contained in paragraphs 218 to 230 of the final report of the Special Rapporteur;

5. Encourages the United Nations Development Programme, the World Bank and other international programmes and agencies to cooperate with the Centre for Human Rights in devising a consistent approach to the selection and use of indicators in the field of human rights with a view to developing a methodology for assessing the impact of development programmes on the enjoyment of human rights;

6. Notes with appreciation the approval by the Commission on Human Rights in its resolution 1991/18 of 1 March 1991 and the Economic and Social Council in its decision 1991/235 of 31 May 1991 of the convening of a United Nations expert seminar on the use of social and economic indicators in monitoring the realization of economic, social and cultural rights, and recommends that the study on the realization of economic, social and cultural rights, as prepared by the Special Rapporteur, be included in the documentation for the seminar;

7. Encourages expert members of the Sub-Commission and the Committee on Economic, Social and Cultural Rights, as well as technical experts from the Department of Economic and Social Development, the United Nations Children's Fund, the United Nations Development Programme, the United Nations Research Institute for Social Development, the specialized agencies and the World Bank to participate in the seminar;

8. Invites the United Nations Statistical Office to collaborate with the Centre for Human Rights in preparing, for the use of the seminar and of the Sub-Commission, a list of statistical indicators currently available in the United Nations system, organized in accordance with the provisions of the International Covenant on Economic, Social and Cultural Rights, and of recommendations for additional relevant indicators which may be collected through existing mechanisms;

9. Decides to consider, at its forty-fifth session, the possibility of examining in a future study the subject of income distribution and the realization of economic, social and cultural rights and the issue of the justiciability of economic, social and cultural rights;

10. Requests the Commission on Human Rights:

(a) To forward its views to the Committee on Economic, Social and Cultural Rights as to the practical feasibility of drafting an optional protocol to the International Covenant on Economic, Social and Cultural Rights granting individuals and groups the right to submit communications alleging non-compliance by States parties, whether by act or omission, with the provisions of the Covenant;

(b) To consider the desirability of appointing thematic rapporteurs entrusted with investigating economic, social and cultural rights and reporting thereon;

11. Requests the Secretary-General:

(a) To ensure the widest possible distribution of the progress reports of the Special Rapporteur throughout the United Nations system, especially among programmes and agencies with mandates in the economic, social and cultural fields, including the Administrative Committee on Coordination, the United Nations Children's Fund, the United Nations Development Programme, the International Labour Organisation, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the World Bank and the International Monetary Fund;

(b) To prepare basic policy guidelines on structural adjustment and economic, social and cultural rights, which could serve as a basis for a continued dialogue between human rights bodies and the international financial institutions;

(c) To invite the international financial institutions to consider the possibility of organizing an expert seminar on the role of these institutions in the realization of economic, social and cultural rights, examining in particular the creation of a United Nations system-wide approach to internationally recognized human rights;

(d) To inform the Sub-Commission, at its forty-fifth session, of the progress achieved in the implementation of the recommendation contained in paragraph 217 of the final report of the Special Rapporteur.